

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**George and Harriet Kisner
Washington County, Iowa**

ADMINISTRATIVE CONSENT ORDER

NO. 2010-AQ- **43**
NO. 2010-SW- **37**

TO: George and Harriet Kisner
509 9th Street
Wellman, IA 52356

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department) and George and Harriet Kisner (the Kisners) for the purpose of resolving air quality and solid waste disposal violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Jon Ryk, Environmental Specialist F O 6
IDNR Field Office #6
1023 W. Madison
Washington, IA 52353

Relating to legal requirements:

Carrie Schoenebaum, Attorney for the DNR
Iowa Department of Natural Resources
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code

12542 PM 1:30 10/11/10

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: George and Harriet Kisner

(IAC) chapter 10, which authorize the Director to assess administrative penalties, the Department has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. The Kisners own property located in Washington County, Iowa at Section 27 T 77N R9W, Wellman, Iowa.
2. On October 23, 2007, the Department received a complaint alleging open burning of plastic, metal and cardboard at the above referenced property.
3. On October 30, 2007, Bob Pyle, an Environmental Specialist with the Department, investigated the complaint. He observed a burn barrel which contained the following: plastic bottles, a tin foil pan, and what appeared to be partially burned diapers. During the investigation, Mr. Pyle took photographs which document the violations.
4. On November 2, 2007, a Notice of Violation (NOV) was sent to the Kisners for illegal open burning of combustible material. This letter advised that in the future all waste should be properly disposed of at a permitted sanitary disposal project and that if any of the discussed violations are found to occur again the Department would pursue legal action.
5. On June 1, 2010, the Washington County Emergency Dispatch called the Department to report that at the 1300 block of Elm Avenue, on property owned by the Kisners, open burning of tires was taking place. The dispatcher stated that a Sheriff's Deputy and the Wellman Public Works Director were on the property and observed the remnants of burnt tires.

Upon receipt of the complaint Jon Ryk, Department Environmental Specialist, went to the site to investigate. When Mr. Ryk arrived the fire was still smoldering and he observed a large amount of steel banding mixed amongst the ashes. Although it was difficult to estimate the number of tires burnt, he estimated 12 had been burned. Other wastes including the following were visible in the burn pile: four partially burned computer monitors, at least one computer terminal, glass bottles, solvent/gas cans, fans bikes various electronics, and fluorescent light bulbs. While on site an individual informed the Department that the Kisners own several rental properties in the area and they take garbage from those properties to this location to burn.

Following the onsite investigation, Mr. Ryk called Mr. Kisner to inform him that he had been to the property and observed the burn pile. Mr. Kisner stated that he had only burnt paper and that other people burn waste at that location as well. After Mr. Ryk reminded Mr. Kisner that he had been to the property, Mr. Kisner admitted that he had burnt waste that had been removed from a mobile home, including cabinets, cupboards, computer monitors and terminals. He stated that in the past he had burnt tires but claimed only bike tires. Mr. Ryk informed Mr. Kisner that the steel banding left from the burnt tires is not indicative of bike

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: George and Harriet Kisner

tires. Lastly, Mr. Kisner admitted that he had cleaned up an old house about a year ago and took a large amount of garbage to that location and burned it.

6. On June 2, 2010, the Department sent the Kisners an NOV for the above discussed violations.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The Kisners allowed the burning of various solid waste including tires. The above stated facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and the Kisners agree to do the following:

1. In the future properly dispose of all solid waste; and
2. The Kisners shall pay an administrative penalty of \$3,500.00 within 30 days of the date the Director signs this order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED IO: George and Harriet Kisner

Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$3,500.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the Department consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Considering disposal costs and hauling costs it is estimated that the Kisners saved approximately \$500.00 by not properly disposing of the solid waste.

Gravity of the Violation - Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and poses a risk to human health and the environment. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Therefore, \$1,500.00 is assessed for this factor.

Culpability - The Kisners have a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that their conduct is subject to the Department's rules. The open burning and solid waste disposal regulations have been in place for more than 20 years. Moreover, in 2007 the Kisners received an NOV which informed them of the illegality of open burning. Based on the above considerations, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of the Kisners. For that reason, the Kisners waive their right to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

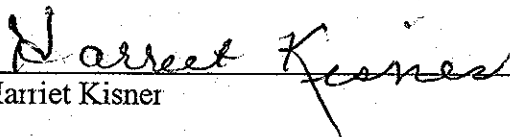
Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: George and Harriet Kisner

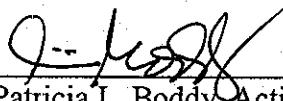
imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.


George Kisner

Dated this 9th day of
October, 2010.


Harriet Kisner

Dated this 9th day of
October, 2010.


Patricia L. Boddy, Acting Director
Iowa Department of Natural Resources

Dated this 18 day of
October, 2010.

Carrie Schoenebaum; DNR Field Office 6; EPA; VI.C and VII.C.1.